



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI

GOVERNOR

DAVID P. LITTELL

COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection

FROM: Jeffrey Kalinich, Bureau of Land & Water Quality, Portland

RE: Consent Agreement for Robert & Diana Martin

DATE: August 20, 2009

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**Statute and Rule Reference:** *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits placing fill and constructing permanent structures in and adjacent to a great pond without first obtaining a permit from the Department.

**Location:** Raymond, Maine

**Description:** In November 2008, a staff inspection found that Robert & Diana Martin had constructed over time a new wall around a preexisting rock jetty in Sebago Lake. The area behind the wall was filled with stone and loam and a lawn was installed. In addition, rock fill had been placed below the normal high water line of the lake in an area approximately 100 square feet in size. No permits had first been obtained for these activities.

**Environmental Issues:** Great ponds are among the State's most sensitive protected natural resources. The cumulative impact of shoreline development and pollutants such as phosphorous entering this type of water body can diminish and destroy the characteristics of the resource. The addition of phosphorous to a great pond can lead to algae blooms. These blooms rob great ponds of oxygen in the lower depths of the lake and essentially eliminate cold water habitat necessary for the survival of cold water fish species. The discharge of soil materials and rocks adjacent and into a lake system also results in the short-term problems associated with erosion and sedimentation as well as the obvious permanent loss of habitat.

The Martins have proposed a restoration plan acceptable to Department staff to remove the new wall, loam, and rock fill in the lake. No long term impact to the lake is anticipated.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating that Robert & Diana Martin pay a monetary penalty of \$2,119.00, which has been paid. The agreement also requires the removal of all fill and the wall in a two stage process based on the seasonal lake level. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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IN THE MATTER OF:

<b>ROBERT MARTIN</b>	)	<b>ADMINISTRATIVE CONSENT</b>
<b>DIANA MARTIN</b>	)	<b>AGREEMENT</b>
<b>RAYMOND, CUMBERLAND, MAINE</b>	)	<b>(38 M.R.S.A. § 347-A)</b>
<b>NRPA</b>	)	
<b>2008-208-L</b>	)	

This Agreement, by and among Robert Martin, Diana Martin, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

1. Robert Martin and Diana Martin own a parcel of land on Deep Cove Road in Raymond, Maine as described and recorded in Book 15501 on Page 249 of the Cumberland County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement contains a portion of Sebago Lake which is a great pond as defined by the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-B(5).
3. On November 5, 2008, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that a permanent structure had been constructed adjacent to and in Sebago Lake. The structure was constructed over a five year period by building a mortared wall around an existing stone jetty and back filling the enclosed area with rock and loam. A lawn, light pole and a few ornamental shrubs were installed on the surface of the structure. The structure is 53 feet long, 23 feet wide at its maximum, and 5 feet high at its maximum. At the end of the structure, rock was placed in an approximately 100 square foot area in Sebago Lake. Some of this rock was moved to the end of the jetty from an adjacent area in the lake and some came from within the structure to make room for the loam. Neither Robert Martin nor Diana Martin first obtained a permit from the Department for these activities.
4. The activities described in Paragraph 3 of this Agreement constitute the following violations:
  - A. By performing or causing to be performed any construction of a permanent structure in, on or over a great pond without first obtaining a permit from the Department, Robert Martin and Diana Martin violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

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IN THE MATTER OF:

ROBERT MARTIN

DIANA MARTIN

RAYMOND, CUMBERLAND, MAINE

NRPA

2008-208-L

) ADMINISTRATIVE CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)  
)

B. By filling, or causing to be filled, a great pond without first obtaining a permit from the Department, Robert Martin and Diana Martin violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

C. By displacing, or causing to be displaced, rocks in a great pond without first obtaining a permit from the Department, Robert Martin and Diana Martin violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

5. On December 8, 2008, the Department issued a Notice of Violation to Robert Martin and Diana Martin regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
6. The Department has regulatory authority over the activities described herein.
7. Pursuant to 38 M.R.S.A. §§ 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
8. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
9. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Robert Martin and Diana Martin agree to:
  - A. Complete to the satisfaction of the Department the plan of restoration submitted to the Department in a letter dated May 29, 2009 by Richard N. Bryant, Esq. and adhere to the specific time schedule contained therein.
  - B. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this Agreement.
  - C. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of two thousand one hundred nineteen dollars (\$2,119.00) as a civil monetary penalty.
10. The Department and the Office of the Attorney General grant a release of their causes of action against Robert Martin and Diana Martin for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 9 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN THE MATTER OF:

ROBERT MARTIN

DIANA MARTIN

RAYMOND, CUMBERLAND, MAINE

NRPA

2008-208-L

) ADMINISTRATIVE CONSENT  
) AGREEMENT  
) (38 M.R.S.A. § 347-A)  
)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

ROBERT MARTIN

BY: Robert Martin DATE: 6-25-09

DIANA MARTIN

BY: Diana Martin DATE: 6-25-09

BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL